



March 28, 2003

ENGROSSED HOUSE BILL No. 1689

DIGEST OF HB 1689 (Updated March 26, 2003 11:07 AM - DI 106)

Citations Affected: IC 4-21.5; IC 12-17.2.

Synopsis: Child care violations. Provides for emergency closure of a child care home or child care center for certain violations. Requires national criminal history background checks for certain child care providers. Requires the division of family and children to provide an Internet site through which the public may obtain information concerning licensed child care providers. Requires the division of family and children to publish notice and provide written notice to the parent or guardian of a child enrolled at a child care center or child care home of certain actions. Requires certain postings by a child care center or child care home.

Effective: July 1, 2003.

**Weinzapfel, Pflum, Summers,
Budak**

(SENATE SPONSOR — LAWSON C)

January 21, 2003, read first time and referred to Committee on Human Affairs.
February 17, 2003, reported — Do Pass.
February 20, 2003, read second time, ordered engrossed. Engrossed.
February 24, 2003, read third time, passed. Yeas 96, nays 0.

SENATE ACTION

February 27, 2003, read first time and referred to Committee on Criminal, Civil and Public Policy.
March 27, 2003, reported favorably — Do Pass.

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EH 1689—LS 7209/DI 97+



March 28, 2003

First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1689

A BILL FOR AN ACT to amend the Indiana Code concerning human services.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 4-21.5-2-6, AS AMENDED BY P.L.1-2002,
2 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2003]: Sec. 6. (a) This article does not apply to the
4 formulation, issuance, or administrative review (but does, except as
5 provided in subsection (b), apply to the judicial review and civil
6 enforcement) of any of the following:

7 (1) **Except as provided in IC 12-17.2-4-18.7 and**
8 **IC 12-17.2-5-18.7**, determinations by the division of family and
9 children.

10 (2) Determinations by the alcohol and tobacco commission.

11 (3) Determinations by the office of Medicaid policy and planning
12 concerning recipients and applicants of Medicaid. However, this
13 article does apply to determinations by the office of Medicaid
14 policy and planning concerning providers.

15 (4) A final determination of the Indiana board of tax review.

16 (b) IC 4-21.5-5-12 and IC 4-21.5-5-14 do not apply to judicial
17 review of a final determination of the Indiana board of tax review.

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SECTION 2. IC 12-17.2-2-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. The division shall perform the following duties:

- (1) Administer the licensing and monitoring of child care centers or child care homes in accordance with this article.
- (2) Ensure that a **national** criminal history background check of the applicant is completed **through the state police department under IC 5-2-5-15** before issuing a license.
- (3) Ensure that a **national** criminal history background check of a child care ministry applicant for registration is completed **through the state police department under IC 5-2-5-15** before registering the child care ministry.
- (4) Provide for the issuance, denial, suspension, and revocation of licenses.
- (5) Cooperate with governing bodies of child care centers and child care homes and their staffs to improve standards of child care.
- (6) Prepare at least biannually a directory of licensees with a description of the program capacity and type of children served that will be distributed to the legislature, licensees, and other interested parties as a public document.
- (7) Deposit all license application fees collected under section 2 of this chapter in the child care fund.
- (8) Require each child care center or child care home to record proof of a child's date of birth before accepting the child. A child's date of birth may be proven by the child's original birth certificate or other reliable proof of the child's date of birth, including a duly attested transcript of a birth certificate.
- (9) **Provide, not later than January 1, 2004, an Internet site through which members of the public may obtain the following information:**
 - (A) **Information concerning violations of this article by a licensed child care provider, including:**
 - (i) **the identity of the child care provider;**
 - (ii) **the date of the violation; and**
 - (iii) **action taken by the division in response to the violation.**
 - (B) **Current status of a child care provider's license.**
 - (C) **Other relevant information.**

SECTION 3. IC 12-17.2-3.5-12, AS AMENDED BY P.L.109-2002, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 12. (a) A provider shall, at the provider's expense,



provide to the voucher agent a copy of a ~~limited~~ **national** criminal history **background check obtained through the state police department under IC 5-2-5-15** for:

- (1) the provider;
- (2) if the provider provides child care in the provider's home, any individual who resides with the provider and who is:
 - (A) at least eighteen (18) years of age; or
 - (B) less than eighteen (18) years of age but has previously been waived from juvenile court to adult court; and
- (3) any individual who is employed at the facility where the provider provides child care.

(b) In addition to the requirement under subsection (a), a provider shall report to the voucher agent any:

- (1) police investigations;
- (2) arrests; and
- (3) criminal convictions;

not listed on a ~~limited~~ **national** criminal history **background check** provided under subsection (a) regarding any of the persons listed in subsection (a).

(c) A provider that meets the other eligibility requirements of this chapter is temporarily eligible to receive voucher payments until the provider receives the ~~limited~~ **national** criminal history **background check** required under subsection (a) from the state police department if:

- (1) the provider:
 - (A) has applied for the ~~limited~~ **national** criminal history **background check** required under subsection (a); and
 - (B) obtains a local criminal history for the individuals described in subsection (a) from each individual's local law enforcement agency; and
- (2) the local criminal history does not reveal that an individual has been convicted of a:
 - (A) felony;
 - (B) misdemeanor related to the health or safety of a child;
 - (C) misdemeanor for operating a child care center without a license under IC 12-17.2-4-35; or
 - (D) misdemeanor for operating a child care home without a license under IC 12-17.2-5-35.

(d) A provider is ineligible to receive a voucher payment if an individual for whom a ~~limited~~ **national** criminal history **background check** is required under this section has been convicted of a:

- (1) felony;



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(2) misdemeanor related to the health or safety of a child;

(3) misdemeanor for operating a child care center without a license under IC 12-17.2-4-35; or

(4) misdemeanor for operating a child care home without a license under IC 12-17.2-5-35;

until the individual is dismissed from employment at the facility or no longer resides with the provider.

SECTION 4. IC 12-17.2-4-3, AS AMENDED BY P.L.109-2002, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. (a) An applicant must apply for a child care center license on forms provided by the division.

(b) An applicant must submit the required information as part of the application.

(c) The applicant must submit with the application a statement attesting that the applicant:

(1) has not been convicted of:

(A) a felony;

(B) a misdemeanor relating to the health or safety of children;

(C) a misdemeanor for operating a child care center without a license under section 35 of this chapter; or

(D) a misdemeanor for operating a child care home without a license under IC 12-17.2-5-35; and

(2) has not been charged with:

(A) a felony;

(B) a misdemeanor relating to the health or safety of children;

(C) a misdemeanor for operating a child care center without a license under section 35 of this chapter; or

(D) a misdemeanor for operating a child care home without a license under IC 12-17.2-5-35;

during the pendency of the application.

(d) An applicant must submit the necessary information, forms, or consents for the division to ~~conduct~~ **obtain** a **national** criminal history **background** check **through the state police department under IC 5-2-5-15.**

(e) The applicant must do the following:

(1) ~~Conduct~~ **Obtain** a **national** criminal history **background** check of the applicant's employees and volunteers **through the state police department under IC 5-2-5-15.**

(2) Maintain records of each **national** criminal history **background** check.

SECTION 5. IC 12-17.2-4-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 12. (a) A license for a

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child care center expires two (2) years after the date of issuance, unless revoked, modified to a probationary or suspended status, or voluntarily returned.

(b) A license issued under this chapter:

(1) is not transferable;

(2) applies only to the licensee and the location stated in the application; and

(3) remains the property of the division.

(c) A current license shall be publicly displayed.

(d) When a licensee submits a timely application for renewal, the current license shall remain in effect until the division issues a license or denies the application.

(e) A licensee shall publicly display and make available, as a handout, written documentation of:

(1) any changes in status of the licensee's license;

(2) a telephone number and an Internet site where information may be obtained from the division regarding:

(A) the current status of the licensee's license;

(B) any complaints filed with the division concerning the licensee; and

(C) violations of this article by the licensee; and

(3) a telephone number of the office of the Indiana child care resource and referral program of the county in which the child care center is located.

SECTION 6. IC 12-17.2-4-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 14. (a) The division may grant a probationary license to a licensee who is temporarily unable to comply with a rule if:

(1) the noncompliance does not present an immediate threat to the health and well-being of the children;

(2) the licensee files a plan with the division or the state fire marshal to correct the areas of noncompliance within the probationary period; and

(3) the division or state fire marshal approves the plan.

(b) A probationary license is valid for not more than six (6) months. The division may extend a probationary license for one (1) additional period of six (6) months.

(c) An existing license is invalidated when a probationary license is issued.

(d) At the expiration of the probationary license, the division shall reinstate the original license to the end of the original term of the license, issue a new license, or revoke the license.



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(e) Upon receipt of a probationary license, the licensee shall return to the division the previously issued license.

(f) The division shall:

(1) upon issuing a probationary license under this section, provide written notice to the licensee that the division will provide the notice required under subdivision (2); and

(2) not more than seven (7) days after issuing a probationary license under this section, publish notice under IC 5-3-1 and provide written notice to the parent or guardian of each child enrolled in the child care center of the:

(A) issuance of the probationary license; and

(B) reason for the issuance of the probationary license.

SECTION 7. IC 12-17.2-4-18.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 18.7. **(a) The division shall adopt rules under IC 4-22-2 to establish a list of violations of this article that would pose an immediate threat to the life or well-being of children in the care of a licensee.**

(b) If an employee or agent of the division determines that a violation described in subsection (a) exists, the division shall:

(1) issue an emergency or another temporary order under IC 4-21.5-4 requiring the licensee to immediately cease operation of the child care center; and

(2) contact the parent or guardian of each child enrolled in the child care center to inform the parent or guardian:

(A) that the division has issued an order to require the licensee to cease operation of the child care center; and

(B) of the reason for the order to cease operation;

pending the outcome of proceedings conducted under sections 20 through 22 of this chapter.

(c) An emergency or another temporary order issued by an employee or agent of the division must be approved by the director.

(d) An approval under subsection (c) may be orally communicated to the employee or agent issuing the order. However, the division shall maintain a written record of the approval.

SECTION 8. IC 12-17.2-4-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 19. Except as provided in section **18.7** or 29 of this chapter, the division shall give a licensee thirty (30) calendar days written notice by certified mail of an enforcement action. The licensee shall also be provided with the



opportunity for an informal meeting with the division. The licensee must request the meeting within ten (10) working days after receipt of the certified notice.

SECTION 9. IC 12-17.2-4-20 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 20. (a) An administrative hearing concerning the decision of the division to impose a sanction under this chapter shall be provided upon a written request by the child care center. The request must be made within thirty (30) calendar days after receiving notice under section **18.7 or** 19 of this chapter. The written request must be made separately from an informal meeting request made under section 19 of this chapter.

(b) The administrative hearing shall be held within sixty (60) calendar days after receiving the written request.

SECTION 10. IC 12-17.2-4-27 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 27. (a) After a license is revoked or suspended, the division shall **publish notice under IC 5-3-1 and** notify in writing each person responsible for the children in care ~~to ensure that those children are removed: that the license has been revoked or suspended.~~

(b) The written notice shall be sent to the last known address of the person responsible for the child in care and shall state that the license of the child care center has been revoked or suspended.

SECTION 11. IC 12-17.2-5-3, AS AMENDED BY P.L.109-2002, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 3. (a) An applicant must apply for a child care home license on forms provided by the division.

(b) An applicant must submit the required information as part of the application.

(c) An applicant must submit with the application a statement attesting that the applicant has not been:

(1) convicted of:

(A) a felony;

(B) a misdemeanor relating to the health or safety of children;

(C) a misdemeanor for operating a child care center without a license under IC 12-17.2-4-35; or

(D) a misdemeanor for operating a child care home without a license under section 35 of this chapter; and

(2) charged with:

(A) a felony;

(B) a misdemeanor relating to the health or safety of children;

(C) a misdemeanor for operating a child care center without a license under IC 12-17.2-4-35; or

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1 (D) a misdemeanor for operating a child care home without a
 2 license under section 35 of this chapter;
 3 during the pendency of the application.

4 (d) An applicant must submit the necessary information, forms, or
 5 consents for the division to ~~conduct~~ **obtain** a **national** criminal history
 6 **background** check on the applicant and the applicant's spouse **through**
 7 **the state police department under IC 5-2-5-15.**

8 (e) An applicant must do the following:

9 (1) ~~Conduct~~ **Obtain** a **national** criminal history **background**
 10 check **through the state police department under IC 5-2-5-15**
 11 of the applicant's:

12 (A) employees;

13 (B) volunteers; and

14 (C) household members who are:

15 (i) at least eighteen (18) years of age; or

16 (ii) less than eighteen (18) years of age but have previously
 17 been waived from juvenile court to adult court.

18 (2) Maintain records of each **national** criminal history
 19 **background** check.

20 SECTION 12. IC 12-17.2-5-12 IS AMENDED TO READ AS
 21 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 12. (a) A license for a
 22 child care home expires two (2) years after the date of issuance, unless
 23 revoked, modified to a probationary or suspended status, or voluntarily
 24 returned.

25 (b) A license issued under this chapter:

26 (1) is not transferable;

27 (2) applies only to the licensee and the location stated in the
 28 application; and

29 (3) remains the property of the division.

30 (c) A current license shall be publicly displayed.

31 (d) When a licensee submits a timely application for renewal, the
 32 current license shall remain in effect until the division issues a license
 33 or denies the application.

34 (e) A licensee shall publicly display and make available, as a
 35 **handout, written documentation of:**

36 (1) **any changes in status of the licensee's license; and**

37 (2) **a telephone number and an Internet site where**
 38 **information may be obtained from the division regarding:**

39 (A) **the current status of the licensee's license;**

40 (B) **any complaints filed with the division concerning the**
 41 **licensee; and**

42 (C) **violations of this article by the licensee; and**



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(3) a telephone number of the office of the Indiana child care resource and referral program of the county in which the child care home is located.

SECTION 13. IC 12-17.2-5-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 14. (a) The division may grant a probationary license to a licensee who is temporarily unable to comply with a rule if:

- (1) the noncompliance does not present an immediate threat to the health and well-being of the children;
- (2) the licensee files a plan with the division to correct the areas of noncompliance within the probationary period; and
- (3) the division approves the plan.

(b) A probationary license is valid for not more than six (6) months. The division may extend a probationary license for one (1) additional period of six (6) months.

(c) An existing license is invalidated when a probationary license is issued.

(d) At the expiration of the probationary license, the division shall reinstate the original license to the end of the original term of the license, issue a new license, or revoke the license.

(e) Upon receipt of a probationary license, the licensee shall return to the division the previously issued license.

(f) The division shall:

- (1) upon issuing a probationary license under this section, provide written notice to the licensee that the division will provide the notice required under subdivision (2); and**
- (2) not more than seven (7) days after issuing a probationary license under this section, publish notice under IC 5-3-1 and provide written notice to the parent or guardian of each child enrolled in the child care home of the:**

(A) issuance of the probationary license; and

(B) reason for the issuance of the probationary license.

SECTION 14. IC 12-17.2-5-18.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 18.7. (a) **The division shall adopt rules under IC 4-22-2 to establish a list of violations of this article that would pose an immediate threat to the life or well-being of children in the care of a licensee.**

(b) **If an employee or agent of the division determines that a violation described in subsection (a) exists, the division shall:**

- (1) issue an emergency or another temporary order under IC 4-21.5-4 requiring the licensee to immediately cease**

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operation of the child care home; and

(2) contact the parent or guardian of each child enrolled in the child care home to inform the parent or guardian:

(A) that the division has issued an order to require the licensee to cease operation of the child care home; and

(B) of the reason for the order to cease operation;

pending the outcome of proceedings conducted under sections 20 through 22 of this chapter.

(c) An emergency or another temporary order issued by an employee or agent of the division must be approved by the director.

(d) An approval under subsection (c) may be orally communicated to the employee or agent issuing the order. However, the division shall maintain a written record of the approval.

SECTION 15. IC 12-17.2-5-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 19. Except as provided in section **18.7 or** 29 of this chapter, the division shall give a licensee thirty (30) calendar days written notice by certified mail of an enforcement action. The licensee shall also be provided with the opportunity for an informal meeting with the division. The licensee must request the meeting within ten (10) working days after receipt of the certified notice.

SECTION 16. IC 12-17.2-5-20 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 20. (a) An administrative hearing concerning the decision of the division to impose a sanction under this chapter shall be provided upon a written request by the child care home. The request must be made within thirty (30) calendar days after receiving notice under section **18.7 or** 19 of this chapter. The written request must be made separately from an informal meeting request made under section 19 of this chapter.

(b) The administrative hearing shall be held within sixty (60) calendar days after receiving the written request.

SECTION 17. IC 12-17.2-5-27 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 27. (a) After a license is revoked or suspended, the division shall **publish notice under IC 5-3-1 and** notify in writing each person responsible for the children in care ~~to ensure that those children are removed; that the license has been revoked or suspended.~~

(b) The written notice shall be sent to the last known address of the person responsible for the child in care and shall state that the license of the child care home has been revoked or suspended.

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1 SECTION 18. IC 12-17.2-6-14 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 14. The child care
3 ministry must do the following:

4 (1) ~~Conduct~~ **Obtain** a **national** criminal history **background**
5 check of the child care ministry's employees and volunteers
6 **through the state police department under IC 5-2-5-15.**

7 (2) Maintain records of each **national** criminal history
8 **background** check.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Human Affairs, to which was referred House Bill 1689, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

SUMMERS, Chair

Committee Vote: yeas 12, nays 0.

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COMMITTEE REPORT

Mr. President: The Senate Committee on Criminal, Civil and Public Policy, to which was referred House Bill No. 1689, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to House Bill 1689 as printed February 18, 2003.)

LONG, Chairperson

Committee Vote: Yeas 6, Nays 0.

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